The International Capital Markets Review

Twelfth Edition

Editor
Jeffrey Golden KC (Hon)

The Law Reviews

© 2022 Law Business Research Ltd

The International Capital Markets Review

Twelfth Edition

Reproduced with permission from Law Business Research Ltd
This article was first published in October 2022
For further information please contact Nick.Barette@thelawreviews.co.uk

Editor
Jeffrey Golden KC (Hon)

The LawReviews

© 2022 Law Business Research Ltd

PUBLISHER
Clare Bolton

HEAD OF BUSINESS DEVELOPMENT
Nick Barette

TEAM LEADER
Katie Hodgetts

SENIOR BUSINESS DEVELOPMENT MANAGER
Rebecca Mogridge

BUSINESS DEVELOPMENT MANAGER
Joey Kwok

BUSINESS DEVELOPMENT ASSOCIATE
Archie McEwan

RESEARCH LEAD
Kieran Hansen

EDITORIAL COORDINATOR
Isabelle Gray

PRODUCTION AND OPERATIONS DIRECTOR
Adam Myers

PRODUCTION EDITOR
Martin Roach

SUBEDITOR
Caroline Fewkes

CHIEF EXECUTIVE OFFICER
Nick Brailey

Published in the United Kingdom
by Law Business Research Ltd
Holborn Gate, 330 High Holborn, London, WC1V 7QT, UK
© 2022 Law Business Research Ltd
www.TheLawReviews.co.uk

No photocopying: copyright licences do not apply.
The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients. Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided was accurate as at October 2022, be advised that this is a developing area.
Enquiries concerning reproduction should be sent to Law Business Research, at the address above.
Enquiries concerning editorial content should be directed
to the Publisher – clare.bolton@lbresearch.com

ISBN 978-1-80449-131-7

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

3 HARE COURT CHAMBERS

AFRIDI & ANGELL

ALLEN & OVERY

CMS REICH-ROHRWIG HAINZ RECHTSANWÄLTE GMBH

DE PARDIEU BROCAS MAFFEI

G ELIAS

GORRISSEN FEDERSPIEL ADVOKATPARTNERSELSKAB

KING & WOOD MALLESONS

LECOCQASSOCIATE

LEE AND LI, ATTORNEYS-AT-LAW

MORRISON FOERSTER LAW OFFICES

NADER, HAYAUX & GOEBEL

NIEDERER KRAFT FREY LTD

PAKSOY

SIDLEY AUSTIN LLP

VIEIRA DE ALMEIDA

© 2022 Law Business Research Ltd

CONTENTS

PREFACE v
Jeffrey Golden KC (Hon)

Chapter 1 DISTRIBUTED LEDGER TECHNOLOGY 1
Dominique Lecocq, Pierre-Antoine Keiser and Logaina M Omer

Chapter 2 AUSTRALIA 14
Ian Paterson

Chapter 3 AUSTRIA 40
Martin Zuffer

Chapter 4 DENMARK 53
Rikke Schiøtt Petersen and Morten Nybom Bethe

Chapter 5 FRANCE 65
Corentin Coatalem and Côme Chaine

Chapter 6 GERMANY 89
Stefan Henkelmann and Lennart Dahmen

Chapter 7 JAPAN 100
Akihiro Wani and Reiko Omachi

Chapter 8 LUXEMBOURG 119
Frank Mausen, Henri Wagner, Paul Péporté and Franz Kerger

Chapter 9 MEXICO 148
Julián Garza, Gunter A Schwandt and Nicolás Pacheco L

Chapter 10 NIGERIA 158
Fred Onuobia, Ayodele Ashiata Kadiri and Lolia Biobele-Georgewill

© 2022 Law Business Research Ltd

Chapter 11 PORTUGAL......170
José Pedro Fazenda Martins, Orlando Vogler Guiné and Soraia Ussene

Chapter 12 SPAIN......185
Charles Poole-Warren, Salvador Ruiz Bachs, Juan Hormaechea, Teresa Méndez, Alfonso Gutiérrez and Álvaro Rojo

Chapter 13 SWITZERLAND......201
Daniel Bono, Andrea Giger and Philip Spoerlé

Chapter 14 TAIWAN......208
Abe Sung and Mark Yu

Chapter 15 TURKEY......216
Ömer Çollak and Ökkeş Şahan

Chapter 16 UNITED ARAB EMIRATES......230
Rahat Hussain Dar

Chapter 17 UNITED STATES......247
Alan Grinceri, Michael Hyatte and Sara von Althann

Appendix 1 ABOUT THE AUTHORS......279
Appendix 2 CONTRIBUTORS' CONTACT DETAILS......295

© 2022 Law Business Research Ltd

PREFACE

A year ago, we asked, 'Is that light at the end of the pandemic tunnel?'

Yes, we had been caught unawares by the pandemic, lockdowns and working from home (WFH).

We also did not see and anticipate other challenges brought about by covid-19, basic as some of these may have been – hidden as they may have been also in notice provisions and other boilerplate buried in the back recesses of our transaction documents. How do you give effective notice to offices closed (often with the force of law) and with the decentralisation of WFH? If none of the methods contemplated by the parties' agreement can be used, may a different method be used instead?

And whether the pandemic itself was an excuse for non-performance of financial market obligations? Does it trigger *force majeure* clauses in our contracts? Does it frustrate a relevant commercial purpose?

Yes, we may not have foreseen all that. However, even as the international capital markets (ICM) train emerged from pandemic tunnel darkness, there was more trouble on the tracks lurking round the bend. And we did not see all that coming either. Sanctions brought by Russia's invasion of Ukraine, turmoil in the stocks and bonds markets, elevated inflation, increasing interest rates. Liquidity drying up, prices becoming increasingly volatile. At the time of writing, the S&P 500 has just suffered its worst one-day drop in months, global equity market issuance is down 68 per cent and there are reports that, at the current pace of things, 2022 could be the most difficult year for raising capital through IPOs since 1995.[1]

ICM practice can be full of surprises. Challenges though there may be, however, the capital markets have a long track-record of resilience. International capital markets lawyers are still in business, still relevant. Global law firms are reporting record profits and are actively hiring more ICM lawyers.

But our modus operandi may have changed a bit. While financial institutions and law firms are cautiously encouraging a return to the office, technology and our recent experience by necessity of remote working has encouraged more self-sufficiency. In a world of WFH, we keep company with the books on our shelves more than the other lawyers in the building. In such circumstances, there are ever more compelling reasons to keep this particular book on that shelf or otherwise remotely accessible through the digital platform maintained by The Law Reviews. We can expect to turn more often to published answers when we cannot as easily consult the practitioner in the office next door.

1 SIFMA Smartbrief, 23 August 2022.

© 2022 Law Business Research Ltd

As I have written before, this book serves two purposes – one obvious, but the other possibly less so.

Quite obviously, and one reason for its continuing popularity, *The International Capital Markets Review* addresses the comparative law aspect of our readers' international capital markets (ICM) workload and equips them with a reference source. Globalisation and technological change mean that the transactional practice of a capital markets lawyer, wherever based (even WFH), no longer enjoys the luxury – if ever it did – of focusing solely on a home market within the confines of a single jurisdiction. Globalisation means that fewer and fewer opportunities or challenges are truly local, and technology more and more permits a practitioner to tackle international issues.

Moreover, clients certainly may have multi-jurisdictional ambitions or, even if unintended, their activities often may risk multi-jurisdictional impact. In such cases, it would be a brave but possibly foolish counsel who assumed: 'The only law, regulation and jurisdiction that matter are my own!'

Ironically, the second purpose this book aims to serve is to equip its readers to do a better job as practitioners at home. In other words, reading the summaries of foreign lawyers, who can describe relevant foreign laws and practices, is perfectly consistent with and helpful when interpreting and giving advice about one's own law and practice.

As well as giving guidance for navigating a particular local but, from the standpoint of the reader, foreign scene, the comparative perspectives presented by our authors present an agenda for thought, analysis and response about home jurisdiction laws and regulatory frameworks, thereby also giving lawyers, in-house compliance officers, regulators, law students and law teachers an opportunity to create a checklist of relevant considerations both in light of what is or may currently be required in their own jurisdiction but also as to where things there could, or should, best be headed (based on best practices of another jurisdiction) for the future.

Thus, an unfamiliar and still-changing legal jurisdiction abroad may raise awareness and stimulate discussion, which in turn may assist practitioners to revise concepts, practices and advice in both our domestic and international work. Why is this so important? The simple answer is that it cannot be avoided in today's ICM practice. Just as importantly, an ICM practitioner's clients would not wish us to have a more blinkered perspective.

A few years back, I had the honour of sharing the platform with a United Kingdom Supreme Court Justice, a distinguished Queen's Counsel and three American academics. Our topic was 'Comparative Law as an Appropriate Topic for Courts'. The others concentrated their remarks, as might have been expected, on the context of matters of constitutional law, and that gave rise to a spirited debate. I attempted to take some of the more theoretical aspects of our discussion and ground them in the specific example of the capital markets, and particularly the over-the-counter derivatives market.

Activity in that market, I said, could be characterised as truly global. More to the point, I posited, that, whereas you might get varied answers if you asked a country's citizens whether they considered it appropriate for a court to take account of the experiences of other jurisdictions when considering issues of constitutional law, in my view derivatives market participants would uniformly wish courts to at least be aware of and consider relevant financial market practice beyond their jurisdictional borders and comparative jurisprudence (especially from English and New York courts, which are most often called upon to adjudicate disputes about derivatives), even when traditional approaches to contract construction as between courts in different jurisdictions may have differed.

© 2022 Law Business Research Ltd

In such cases, with so much at stake given the volumes of financial market trading on standard terms, and given the complexity and technicality of many of the products and the way in which they are traded and valued, there appears to me to be a growing interest in comparative law analysis and an almost insatiable appetite among judges to know at least how experienced courts have answered similar questions.

There is no reason to think that ICM practitioners are any differently situated in this regard, or less in need of or less benefited by a comparative view when facing up to the often technical and complex problems confronting them, than are judges. After all, it is only human nature to wish not to be embarrassed or disadvantaged by what you do not know.

Of course, it must be recognised that there is no substitute for actual and direct exchanges of information between lawyers from different jurisdictions. Ours should be an interdependent professional world. A world of shared issues and challenges, such as those posed by market regulation. A world of instant communication. A world of legal practices less constrained by jurisdictional borders. In that sense and to that end, the directory of experts and their law firms in the appendices to this book may help to identify local counterparts in potentially relevant jurisdictions. And, in that case, I hope that reading the content of this book may facilitate discussions with a relevant author.

In conclusion, let me add that our authors are indeed the heroes of the stories told in the pages that follow. My admiration for our contributing experts, as I wrote in the preface to the last edition, continues. It remains, too, a distinct privilege to serve as their editor, and once again I shall be glad if their collective effort proves helpful to our readers when facing the challenges of their ICM practices amid the growing interdependence of our professional world – and now the post-coronavirus pandemic challenges that have arisen and their impact on the global economy.

Is there a clearer track for the ICM train ahead and the ICM practitioners aboard it? Let's hope so.

In the meantime, best wishes for this, perhaps another difficult, period. Stay safe, stay well and stay alert.

Jeffrey Golden KC (Hon)
3 Hare Court
London
October 2022

© 2022 Law Business Research Ltd

Chapter 11

PORTUGAL

José Pedro Fazenda Martins, Orlando Vogler Guiné and Soraia Ussene[1]

I INTRODUCTION

According to the Bank of Portugal's projections, the Portuguese economy will grow by 6.3 per cent in 2022, 2.6 per cent in 2023 and 2 per cent in 2024. The rate of change projected for 2022 is the result of the carry-over effect of developments in activity in the previous year, associated with the pandemic crisis recovery process, which continued into the beginning of the current year as GDP reached pre-pandemic levels in the first quarter. The deteriorating international environment constrains developments in economic activity. Although the Portuguese economy is not directly exposed to the conflict between Russia and Ukraine, it is also suffering from its indirect impacts, which have resulted in increased uncertainty, higher inflation rates and sharper disruptions in global production chains, additionally heightened by the pandemic situation in China. These factors have contributed to a slowdown in external demand. Bearing this scenario in mind, financing conditions are expected to worsen over the projection horizon, with gradually less accommodative monetary policies, giving rise to inflationary pressures around the world. Despite these recent events, Portugal maintains signs of recovery. According to the Bank of Portugal investment will continue to grow by 6 per cent on average during 2022–2024, close to that observed in 2021, largely reflecting inflows of European funds and exports will grow by 13.4 per cent in 2022, gradually decelerating to close to the pre-pandemic pace in 2024. The unemployment rate will continue to decline to 5.6 per cent in 2022.

The Portuguese capital markets framework is substantially in line with European legislation, which has been responsible for greater harmonisation across the European Union. Notwithstanding, specific domestic laws and regulations may apply to specific instruments, their form of representation and transactions. Regulations issued by the Portuguese Securities Market Commission (CMVM), the Portuguese central securities depository Interbolsa and Euronext Lisbon should also be considered, since these national regulatory authorities may condense, adapt and interpret European legislation with a certain level of discretion.

The Securities Code (enacted by Decree-Law No. 486/99, as amended) establishes the framework for financial instruments, offers, financial markets and financial intermediation and has been the statute used to transpose a variety of important European directives (including any amendments thereto) into national law, such as the Shareholders' Rights

1 José Pedro Fazenda Martins is a partner, Orlando Vogler Guiné is a managing associate and Soraia Ussene is an associate at Vieira de Almeida. The authors wish to thank João Ramalho Dias, an associate in the firm's banking and finance team, for his contribution to preparing this chapter.

© 2022 Law Business Research Ltd

Directive,[2] the Transparency Directive,[3] the Takeover Directive,[4] the Settlement Directives[5] and the MiFID II Directive.[6] Other relevant statutes include the Companies Code (PCC) (as enacted by Decree-Law No. 262/86, as amended, which governs the corporate rules on shares and bonds) and the Credit Institutions and Financial Companies Framework (enacted by Decree-Law No. 298/92, as amended, also heavily amended to transpose or adjust to EU legislation).

A considerable number of new or revised regulatory frameworks have affected the Portuguese capital markets during 2022, including:

a Decree-Law No. 31/2022, of 6 May 2022, which transposes Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019 on the issue of covered bonds and covered bonds public supervision (the Covered Bonds Directive). This Decree-Law approves the new Legal Regime of Covered Bonds, and, without prejudice to certain transitory provisions, this new regime entered into force on 1 July 2022, imposing substantial changes on the legal framework that was applicable to the issue of covered bonds. For further information on the new Legal Regime of Covered Bonds, see 'Covered Bonds', below; and

b Law No. 99-A/2021, of 31 December, amending the Portuguese Securities Code, which entails a number of relevant developments to the capital markets with the purpose to: (1) simplify and reduce regulatory burdens while safeguarding investor protection and market integrity; (2) align with the European legislation seeking to eliminate national level legal or regulatory requirements; (3) change the legal framework for public offers for distribution; and (4) amend the legal framework for takeover bids.

We highlight the main changes of the revised Portuguese Securities Code, which include: (1) the deletion of the public company status, allowing companies to finance themselves, including through access to a non-regulated market, by issuing equity instruments without being subject to the current rules applicable to public companies; for example, the communication of qualifying holdings or falling under the framework for mandatory takeover bid are mechanisms applicable only to companies with shares admitted to trading on a regulated market; (2) the admissibility of the issue of shares with plural voting rights, albeit restricted to listed companies; (3) the simplification of the qualifying holdings framework, notably by eliminating the communication duty in relation to the 2 per cent threshold (a requirement which does not exist in most European markets); and (4) the simplification and deletion of reporting duties considered non-essential or redundant (resulting in the removal or clarification, or both, of approximately 50 per cent of issuers' reporting duties). In the market operations context, we highlight the following major amendments: (1) an increase, from €5 million to €8 million, of the threshold below which the publication of a prospectus is not required; (2) removal of the mandatory nature of assistance and placement services in public offerings, thereby allowing for the reduction of costs incurred by offerors with services

2 Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017, amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement.

3 Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

4 Directive 2004/25/EC on takeover bids.

5 Directive 98/26/EC on settlement finality in payment and securities settlement systems.

6 Directive 2014/65/EU on markets in financial instruments.

© 2022 Law Business Research Ltd

provided by financial intermediaries, which are now voluntary; (3) flexibility in the choice of language of the prospectus, in line with CMVM's recent practice thereby facilitating access for international investors via the Portuguese market; and (4) the rules on takeover bids shall no longer apply to the acquisition of debt instruments; and (5) amendments to the liability framework for the contents of the prospectus.

Regulations, notices and instructions issued by the CMVM or the Bank of Portugal may also be relevant. Bearing in mind the banking union currently being implemented and EU harmonisation developments, national banking laws are largely in line with EU rules.

However, the Portuguese capital markets framework still has a number of specificities that should be taken into account. The securities ownership regime is one of these specificities. Under Portuguese law, legal ownership is not set immediately at the level of the accounts opened by financial intermediaries at the local central securities depository (CSD), but rather at a second level in the chain of custody, namely at the level of the accounts opened by clients with the financial intermediaries themselves. In practice, the system works seamlessly and most international investors hold Portuguese securities through indirect custody chains, going through Euroclear and Clearstream or other global custodians.

The financial regulatory system is composed of three pillars (following the same structure as the European supervisory system and divided according to the activities and matters at stake), which are supervised by three main authorities:

a the Bank of Portugal (the country's central bank), which has a prudential function (in coordination with the European Central Bank, particularly for the largest Portuguese banks) and market conduct powers to supervise matters related to credit institutions and financial companies operating in Portugal;

b the CMVM, which is empowered to supervise the conduct of financial markets, issuers of securities, and financial instruments and financial intermediaries (investment firms and credit institutions acting in a capacity that falls within the scope of MiFID II) and, which, in 2020, also acquired the competence to exercise prudential supervision over asset managers and collective investment undertakings; and

c the Portuguese Insurance and Pension Funds Authority (ASF), which supervises the national insurance system.

Finally, the Portuguese authorities may apply sanctions to entities that fail to comply with the applicable laws. Fines generally depend on the type of entity and activities carried out, as well as the seriousness of the breach. A supervisory authority's decision may be contested and submitted to the decision of a special court that exclusively decides on competition, regulation and supervisory matters.

Since the global financial crisis and given the resulting collapse of some important Portuguese economic conglomerates, supervisory authorities have been very active in the enforcement and sanction of market participants, with the above-mentioned special court on regulatory matters having been set up to enhance the capacity to respond to growing regulatory demands. In recent years, authorities have imposed fines on several entities, including banking board members accused of hiding relevant accounting information.

© 2022 Law Business Research Ltd

II THE YEAR IN REVIEW

i Developments affecting debt and equity offerings

Equity markets

Given the relatively small size of the Portuguese market, which has a reduced number of listed companies compared with the capital markets of larger European economies, takeover bids, either voluntary or compulsory, are not very common.

Following Greenvolt – Energias Renováveis, SA (Greenvolt)'s initial private offering and the admission to trading on Euronext Lisbon in July 2021, Greenvolt issued new ordinary, book-entry and nominative shares, representing 12.785 per cent of its share capital. Despite the challenging market environment, the total demand amounted to circa 186.8 per cent of the offer size.

SPACs

In 2020 and early 2021, the Portuguese financial community followed with interest the listing of Special Purpose Acquisition Companies (SPACs) in several European markets. In July 2021, ESMA issued a statement declaring that, while making the case for increased transparency and quality disclosures on relevant matters, such as conflicts of interests, SPAC shares are subject to MiFID product governance, limiting, in practice and to a certain extent, its access to retail clients of financial institutions. We take the view that if shares of SPACs that follow in substance the transparency requirements laid down in ESMA's statement, then distributors may include retail clients in the positive target market of such instruments. In addition, CMVM published its understanding regarding the admissibility of SPACs in Portugal, which stated that the CMVM considers admissible the listing on Euronext Lisbon (the Portuguese regulated market) of shares representing the share capital of a SPAC and affirming that it is not prohibited by the Portuguese legislation.

Debt markets

The past four years have been strong years in the debt markets for non-financial Portuguese companies, which have continued to seek recourse to the retail capital markets. Government bonds also continued to be placed under public offers, thus allowing retail investors to continue their exposure to this market segment, which had been previously restricted to institutional investors (as far as the primary market was concerned).

Private placements (both listed and not listed) continued to play an important part in the diversification of financing routes for the Portuguese economy. In May 2022, Haitong Bank, SA successfully launched a US$150 million bond issue placed with a large syndicate of managers, and the bonds were listed on the Luxembourg Stock Exchange, irrevocably guaranteed by Haitong Securities Co, Ltd. This transaction, which was assigned a BBB rating by S&P Global Ratings Europe Limited, represents a landmark for Haitong Bank, as it is the bank's first US dollar bond issue. In November 2021, Mota-Engil SGPS, SA (Mota-Engil), a public company listed on Euronext Lisbon and in the Portuguese Stock Index, launched a public subscription offering maturing in 2026, through a subscription offer with two exchange offers launched in respect of notes admitted to trading on Euronext Lisbon and the Luxembourg Stock Exchange. This was Mota-Engil's first sustainability-linked deal (and the first sustainability-linked bonds public offer prospectus approved in Portugal), whereby the company undertook to promote the improvement of one key performance indicator (rate of non-fatal work accidents resulting in leave of absence) with a view to achieving

© 2022 Law Business Research Ltd

a sustainability performance target by 31 December 2025. One of the most innovative aspects of this transaction was the granting of a potential additional remuneration to the noteholders, in the amount of €1.25 per issued note, if Mota-Engil fails to comply with the SPT established for the defined KPI.

In March 2022, the Autonomous Region of the Azores (RAA) issued a 10-year fixed-rate senior bonds, aimed at refinancing its existing debt and contributing to the reduction of RAA's overall financing costs.

In 2021, SADs (the Portuguese football teams' companies) continued to resort to the market to finance themselves through the issuance of debt. In March and April 2022, respectively, both FC Porto – Futebol SAD and Sport Lisboa e Benfica – Futebol SAD issued each a public subscription offer. Both these retail offers combined a subscription offer with one exchange offer of previous bonds issued by the aforementioned SADs.

On 6 September 2021, EDP – Energias de Portugal. SA priced two green fixed to reset rate subordinated notes issuances: one in the total amount of €750 million, with an early redemption option exercisable by EDP five years and three months after the issue date, final maturity date in March 2082 and a yield of 1.6 per cent up to the first reset date falling five years and six months after issuance; and the second in the total amount of €500 million, with an early redemption option exercisable by EDP seven years and nine months after the issue date, final maturity date in March 2082 and a yield of 1.95 per cent up to the first reset date falling eight years after issuance. Similar to the issuances executed in January 2021, January 2020 and January 2019, the instruments are unsecured, senior only to EDP's ordinary shares and junior to its senior debt obligations. Their key features include the optional deferral of interest, which is cash-cumulative and compounding, as well as subject to compulsory payment events.

Finally, in November 2021, Greenvolt carried out bond issuance which bonds were admitted to trading on the Euronext Lisbon regulated market. This bond issuance was carried out in accordance with the Green Bond Framework published on Greenvolt's official website and was supported by a second-party opinion issued by an independent company, specialising in research, ratings and ESG information, confirming that the Green Bond Framework is in line with the Green Bond Principles (2021 version) published by the International Capital Market Association.

The admission to trading of Portuguese law-governed securities on the Spanish alternative fixed-income market (MARF) continues to be a trend, as MARF is a multilateral trading facility and not a regulated market in accordance with MiFID II. Portuguese law-governed companies continue to update their programmes (such as commercial paper) in this market, given that it has a diversified investor base and allows for additional financing possibilities. In 2022, Unicre – Instituição Financeira de Crédito, SA, which is Portuguese credit institution, specialising in the development of consumer credit products for retail customers and payment systems for commerce in general and regulated and supervised by the Bank of Portugal, carried out its inaugural issuance of fixed rate notes due in 2025, in the aggregate nominal amount of €23.5 million. This issue was made through a private offer addressed only to qualified investors.

© 2022 Law Business Research Ltd

ii Developments affecting derivatives, securitisations and other structured products

Derivatives

Regulation (EU) 2019/834 (the EMIR Refit)[7] entered into force in June 2019 after overcoming the major challenge of adjusting to variation margin requirements for financial counterparties and non-financial counterparties (NFCs) above the clearing threshold and clearing requirements for certain interest rate derivatives and credit default swaps (under the European Market Infrastructure Regulation framework) in 2017 (which will be definitively concluded with Phase 6, effective as of 1 September 2022, covering users of derivatives with an aggregate average notional amount of non-centrally cleared OTC derivatives above €8 billion), as well as the challenges presented by MiFID II in 2018, including, inter alia, the obligation to trade certain classes of derivatives through trading venues, and certain pre- and post-transaction information requirements. The EMIR Refit made significant amendments to simplify the documentary process, introducing a new counterparty category (namely the small financial counterparty) and reducing certain burdens, including the reporting requirement for small non-financial counterparties; as of 17 June 2020, financial counterparties became legally liable for the timely and accurate reporting of over-the-counter (OTC) derivatives contracts on behalf of both themselves and their NFC clients.

The market was also impacted by the EU Benchmark Regulation, which established that only compliant benchmarks provided by an authorised administrator could be used in new financial instruments or contracts, from 1 January 2020 onwards. Since not all benchmarks typically used in the financial markets comply with these requirements, market participants were required to review existing agreements accordingly, for example, by transitioning away from EONIA (which ceased being published in January 2022) to the €TR. In addition, market participants have had to adapt their operations and existing agreements to the changes brought by Brexit, which became fully effective on 31 December 2020. Although part of the EU legislation affecting derivatives trading has been onshored in the United Kingdom through the European Union Withdrawal Act 2018 (as amended), market participants must be mindful of certain existing differences (and future divergences) between the EU and UK regimes, namely as regards the mutual recognition of clearing houses, satisfaction of trading obligations, exemptions as to clearing, disclosure and reporting obligations, position limits and the characterisation of OTC derivatives.

Asset-backed securities

Although the securitisation market has remained active during the past four years, in 2022, there has been a further resurgence in performing securitisations, following the trend seen in 2020, with a variety of transactions having already been completed. These included transactions listed on the regulated market of Euronext Lisbon, both retained and placed in the market (at least some tranches of the transactions), with a variety of assets or receivables being securitised, including mortgage-backed loans, motor vehicle loans and credit card

7 Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019, amending Regulation (EU) No. 648/2012 as regards the clearing obligation, suspension of the clearing obligation, reporting requirements, risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories, and requirements for trade repositories.

© 2022 Law Business Research Ltd

receivables. The transaction structures used are, in certain cases, becoming more complex and we have again seen derivatives being used to hedge interest rate risks (but in the form of a cap rather than an ordinary swap).

Non-performing loans (NPLs) are still a hot topic in the Portuguese financial system, and securitisations have been playing an important role in solving this, even though most transactions are still being made in a whole loan sale format. Following the milestone Évora deal completed by Caixa Económica Montepio Geral in November 2017 (the first NPL listing prospectus in southern Europe), similar deals were launched in 2018 and 2019, namely Guincho Finance in November 2018, originated by Caixa Económica Montepio Geral, and Gaia Finance in May 2019, originated by Banco Santander Totta. This type of structure, which is particularly complex, requires the inclusion of a real estate asset management company, a monitoring agent and a servicing committee.

Following the synthetic securitisation launched in May 2019 by a Portuguese bank, on 26 July 2021, the Portuguese market witnessed a multi-jurisdictional synthetic securitisation, in the amount of €3.05 billion, of performing senior secured and unsecured Portuguese loans originated by a Portuguese bank in the normal course of business. This transaction transferred the risk to the underlying assets, resulting in a reduction of the risk-weighted assets (RWAs) associated with the pool, and was structured in accordance with the new EU STS on-balance sheet, as per Article 26(a)1 of the 15 December 2020 amendments to Securitisation Regulation 2017/2402. PCS, as a third-party verification agent, successfully verified the criteria and confirmed the STS label, making Project Castelo the group's first public (market) issuance of a synthetic STS securitisation.

In August 2021, the Portuguese market witnessed a €125 million issuance of securitisation notes of secured receivables comprising both unsecured loans and loans secured by mortgages over assets located in Portugal originated by a couple of Portuguese credit institutions and financial institutions, with one class being admitted to the Official List and traded on the Global Exchange Market.

In June 2022, the Portuguese market also witnessed a €203.3 million cash securitisation of auto loan credits originated by 321Crédito, Instituição Financeira de Crédito, SA, with securitised bonds issued by TAGUS – Sociedade de Titularização de Créditos, SA, that were admitted to trading. Despite signs of an economic downturn and the increasing inflation in the global economy and financial markets, Ulisses Finance No. 3 closed successfully in June 2022, being the third securitisation of the Banco CTT group and its second securitisation with the 'STS' (simple, transparent and standardised) label under the EU Securitisation Regulation and the UK Securitisation Regulation.

Covered bonds

Covered bonds continue to play a role in the Portuguese capital markets, with some issuances on the banking side, including syndicate issuances. Pass-through covered bonds programmes have also been set up by Portuguese issuers. By the end of October 2017, the first issue of pass-through covered bonds (i.e., covered bonds that in certain events convert the redemption structure into a product more similar to asset-back securities) was placed in the market by a Portuguese issuer.

© 2022 Law Business Research Ltd

On 12 March 2018, the European Commission published a proposal for a directive on the issue of covered bonds and covered bond public supervision.[8] In November 2019, the European Parliament and the Council adopted the legislative package for the new Covered Bond Directive[9] and a new related Regulation (the CB Regulation).[10] The new Covered Bonds Directive and CB Regulation were published in the Official Journal on 18 December 2019 and came into effect on 7 January 2020. The Covered Bonds Directive had to be implemented in national regulation by 8 July 2021, and covered bond issuers were required to apply national implementing regulation by 8 July 2022. The Covered Bonds Directive replaced Article 52(4) of the UCITS Directive[11] and established a revised common baseline for the issue of covered bonds for EU regulatory purposes (subject to various options that Members States could select from when implementing the Covered Bonds Directive through national laws).

The Covered Bonds Directive was essentially designed to establish a common legal ground (not as heavily rule-based as the market had feared) and to legally acknowledge existing market practices (significantly leveraging the work carried out by the European Covered Bonds Council). The changes included, inter alia, investors' access to information regarding the cover pool, a baseline covered bonds definition (dual recourse, segregation of assets, bankruptcy remoteness, public supervision, liquidity buffer) and the use of a European Covered Bond Label.

The second part of the harmonisation package (the amendments to the CRR) became directly applicable in the EU on 8 July 2022 by way of the CB Regulation, which amends Article 129 of the CRR. The amendments introduce requirements on minimum over-collateralisation and substitution assets and will strengthen the requirements for covered bonds to be granted preferential capital treatment.

As stated above, the new Legal Regime of Covered Bonds was approved in Portugal and imposed substantial changes on the legal framework that was applicable to the issue of covered bonds, inter alia: (1) the supervision of grandfathered covered bonds was transferred from the Bank of Portugal to CMVM from 1 July 2022; (2) the regulations issued by the Bank of Portugal will remain in force until CMVM issues replacement regulations; and (3) liquidity buffer requirements. Furthermore, there are some hot topics pertaining to this new Legal Regime of Covered Bonds that still remain In the unknown, such as: (1) extendable maturities scheme; (2) liquidity buffer; and (3) the cover pool monitor.

Regarding the extendable maturity scheme, albeit this has been present in all Portuguese covered bond programmes from the onset, notwithstanding the legal omission regarding it, the are certain information and substantive requirements which need to be met. In addition, extensions shall be automatic and can only be triggered by revocation of the authorisation of the credit institution (which leads to the declaration of insolvency and liquidation) or

8 Proposal for a Directive of the European Parliament and of the Council on the issue of covered bonds and covered bond public supervision, amending Directive 2009/65/EC and Directive 2014/59/EU.

9 Directive (EU) 2019/2162 of the European Parliament and of the Council of 27 November 2019 on the issue of covered bonds and covered bond public supervision, amending Directives 2009/65/EC and 2014/59/EU.

10 Regulation (EU) 2019/2160 of the European Parliament and of the Council of 27 November 2019 amending Regulation (EU) No. 575/2013 as regards exposures in the form of covered bonds.

11 Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities.

© 2022 Law Business Research Ltd

foreseeable or actual failure of payment of principal or interest under the covered bonds due on the (initial) maturity date that is not remedied within the deadline (if any) established in the conditions of the issue or programme, not more than than 10 business days. The extension and underlying reason shall be notified to CMVM 10 days in advance or, if that is not possible, as soon as possible; CMVM has the power (although not discretionary) of opposing the extension within the following 10 days. There is, however, a loose end: the law has not expressly stated the position of a notification to CMVM after the 10th day before the extension date. In our view, the interpretation that seems more compatible with the actual terms, definitions, rationale and structure of this mechanism is that, pending a decision from CMVM, the covered bonds automatically extend.

Regarding liquidity buffers, the new Legal Regime of Covered Bonds contains a novelty in this respect: issuers shall have a liquidity buffer covering expected net liquidity outflows within the following 180 days (which shall be composed of Level 1, 2A or 2B liquid assets, each as defined in the Regulation No. 2015/61 (the CRR Delegated Regulation)).

Finally, regarding the cover pool monitor hot topic, Portugal opted-in for the possibility to continue to have an external cover pool monitor (while also allowing the option for an internal unit, in accordance with the Covered Bonds Directive requirements for that option). However, there are some constraints for issuers caused by the new Legal Regime of Covered Bonds, which entails a few changes in relation to the old Covered Bonds Law:

a the cover pool monitor cannot be the issuer's auditor or have been its auditor in the past two years;

b it can remain in office up to 10 consecutive years; and

c it provides an annual report by 31 March each year and a report, in similar terms as the annual report, 10 business days before a new programme is established or converted.

As can be easily intuited, the requirement that the cover pool monitor cannot be the issuer's auditor places constraints on the conversion of programmes established under the old Covered Bonds Law, so we predict that by 2023 it will be somewhat difficult for Portuguese issuers to convert their programmes under the new Legal Regime of Covered Bonds.

UK-based common representatives in existing Portuguese transactions post-Brexit

The common representative is a party in different types of bond issues and conducts the professional representation of investors. Its role resembles that of a trustee in certain Anglo-Saxon jurisdictions. Several UK-based entities act both as common representatives in Portuguese law-governed issues and as trustees in English law-governed issues. The common representative is appointed by the issuer *ab initio*, although the noteholders reserve the right to replace the appointed entity. Whether a common representative is or must be appointed depends on the type of transaction (for example, covered bond issues are required by law to have an appointed common representative; securitisations are not required to have a common representative, although one is usually appointed; EMTN programmes are also not required to have a common representative and one is not usually appointed).

The United Kingdom's departure from the European Union and the end of the transition period have raised concerns over UK-based entities' future ability to perform their roles as common representatives in existing Portuguese law-governed transactions. Portuguese law, notably Article 347(2) of the PCC, states that the common representative 'shall be a law firm, a statutory audit firm, a financial intermediary, an entity authorised to provide investor representation services in any Member State of the European Union or an

© 2022 Law Business Research Ltd

individual with full legal capacity, even if he/she is not a bondholder'. This means, notably for new transactions, that only those entities incorporated in a Member State of the European Union and that provide investor representation services (whether or not on a regulated basis) are allowed to act as common representatives in issues governed by Portuguese law, which from 1 January 2021 excludes UK-based entities.

However, with a view to softening the impacts of Brexit and guaranteeing a smoother transition, preventing the nonexistence of a legal framework after the United Kingdom's exit, Decree-Law No. 106/2020 was approved, which established a set of rules applicable to the field of financial services, after the end of the transitional period, foreseen in the United Kingdom's Withdrawal Act. Pursuant to the aforementioned Decree-Law, credit institutions and investment firms authorised in the United Kingdom to provide ancillary services and investment activities and/or services, operating in Portugal under the right of establishment and the freedom of provision of services, may continue to provide such services to investors in Portugal after the end of the transitional period provided for in the United Kingdom's Withdrawal Act. In order to do so, credit institutions and investment firms authorised in the United Kingdom had to, within three months of the end of the transition period, terminate any current agreements or request authorisation to maintain their activity in Portugal; the latter to be submitted within six months after the end of the transition period.

Conversely, Portuguese transactions governed by English law (as is the case of many Portuguese issuers' EMTN programmes) may not face hurdles of this kind, even though the transactions involve certain aspects of Portuguese law (for example, with respect to the form and transfer of notes and the Interbolsa procedures for the exercise of rights under the notes). The market interpretation seems to be that the trustee exists as a contractual entity that does not fall within the scope of the Portuguese corporate legal framework applicable to common representatives. As such, English law-governed debt issues by Portuguese issuers were not required to substitute their UK-based trustees after 31 December 2020. It is important to mention that, although it is still required by law that covered bond issuers appoint a common representative, this figure no longer needs to be based in the European Union and no longer needs to be an individual person or (for a company) have a certain profession, such as lawyer, auditor, financial intermediary or trustee. We expect the usual trustee entities to continue to perform this role, but without the geographical restriction to the European Union.

Own-funds regulations and senior non-preferred instruments

Following the first Additional Tier 1 (AT1) capital instruments issuance placed on the market in 2017 (€500 million by Caixa Geral de Depósitos), with a write-down (and up) feature rather than a conversion, no further AT1 instruments with a conversion feature have been issued in the market. Other Portuguese banks, including Banco Comercial Português, Banco Santander Totta, SA, Caixa Geral de Depósitos and Novo Banco, subsequently started to issue capital instruments – both AT1 and Tier 2 – in the market. This includes capital instruments issued pursuant to the CRR2, as mentioned below.

The CRR2, the CRD V,[12] both of 20 May 2019, and BRRD 2[13] entered into force on 27 June 2019. Member States were obliged to adopt and publish the measures necessary to comply with CRD V by 28 December 2020, although most provisions have only become applicable from 28 June 2021. Regarding senior non-preferred instruments, Directive (EU)

12 Directive (EU) 2019/878.

13 Directive (EU) 2019/879.

© 2022 Law Business Research Ltd

2017/2399[14] was finally transposed into the Portuguese legal framework by Law No. 23/2019, which established that claims in respect of all deposits shall benefit from a general credit privilege over the movable assets of insolvent entities and a specific credit privilege over their immovable assets. Portuguese issuers have therefore updated their programmes in terms of eligible instruments in accordance with the new CRR rules provided by the CRR2.

Accordingly, in November 2019, Caixa Geral de Depósitos, SA (CGD) issued €500 million of senior non-preferred capital instruments, in compliance with the CRR. This first issuance of senior non-preferred debt has represented a milestone in the Portuguese capital markets and has established the path for new issuances of this type of instrument. CGD issued more senior debt (preferred and non-preferred), and, in 2021 and more recently, issued sustainability senior preferred instruments, which were admitted to trading on the Luxembourg Stock Exchange and placed with retail investors. Following this trend, Novo Banco, SA pursued the same path and returned to issuing senior preferred instruments with two issuances of senior fixed/floating rate senior preferred notes, both admitted to trading on Euronext Dublin and place with retail investors.

Furthermore, to date, other Portuguese banking groups have made recourse to these instruments, but on a private and intra-group level.

MiFID II

The MiFID II and MiFIR legislative package entered into force in 2018, having been incorporated into national law. Whereas MiFIR was directly applicable in Portugal, MiFID II was transposed into Portuguese law by means of Law No. 35/2018 of 20 July after months of delay in the legislative process, having finally entered into force on 1 August 2018. This Law has amended various legal regimes, structuring the organisation and functioning of the Portuguese financial markets, one of which is the Securities Code.

The aim of this regulatory package was to ensure greater transparency for all market participants, while also increasing market safety, efficiency and fairness, by implementing enhanced governance for trading venues, on-exchange trading of standardised derivatives, more intensive regulation of commodity derivatives and greater consolidation of market data.

Investor protection has been stepped up through the introduction of new requirements on product governance and intervention, as well as independent investment advice, improved pre- and post-trade transparency, the extension of existing rules on structured deposits and stronger requirements in a variety of areas, such as the responsibilities of management bodies, cross-selling, staff remuneration, inducement and information, more extensive transaction reporting, conflicts of interest and complaints handling. For the independent discretionary portfolio management and investment advice segments, for instance, this has implied revisiting the fee structures and arrangements in place, along with a global review of their procedures and documentation. Product governance has also posed a very significant challenge.

14 Directive (EU) 2017/2399 of the European Parliament and of the Council of 12 December 2017 amending Directive 2014/59/EU as regards the ranking of unsecured debt instruments in the insolvency hierarchy.

© 2022 Law Business Research Ltd

The PRIIPs Regulation

According to the PRIIPs Regulation, a packaged retail and insurance-based investment product constitutes any investment where, regardless of its legal form, the amount payable or repayable to the retail investor is subject to fluctuations due to exposure to reference values or to the performance of one or more assets not directly purchased by the retail investor.

The PRIIPs Regulation pursues the objective of increasing the transparency and comparability of investment products through the issue of a standardised short-form disclosure document – the PRIIPs key information document (KID) – thereby making it easier for retail investors to understand and compare the key features, risks and costs of different products within the PRIIPs scope.

Annex II to Law No. 35/2018 was used to further regulate the application of the PRIIPs Regulation in Portugal and defines, inter alia:

a the competent supervisory authorities, depending on the nature of the investment product in question (the CMVM, the Bank of Portugal or the ASF);
b a prohibition on the advertising of PRIIPs without the prior approval of marketing materials by the competent supervisory authority;
c a prohibition on making the execution of deposit contracts dependent upon the acquisition of financial instruments, insurance contracts or other financial savings and investment products that do not ensure the invested capital at all times; and
d the obligation to notify the competent supervisory authority of the PRIIP-related KID prior to the date on which it will become available to the public or on which it is amended.

The PRIIPs Regulation must be read in conjunction with Annex II to Law No. 35/2018 and CMVM Regulation 8/2018, the latter applying exclusively to PRIIPs whose issuance, trading or provision of consulting services is supervised by the CMVM and regulating PRIIPs information and trading obligations, specifically:

a the information to be made available;
b the language and features of the KID;
c the content of PRIIP advertising and prior notification of the KID;
d protection measures for non-professional investors; and
e communication and registration duties.

iii Cases and dispute settlement

In addition to the derivatives litigation and prospectus case discussed below, we highlight that the resolution measure applied to Banco Espírito Santo (BES) (and to Banif) entailed a significant amount of litigation involving different stakeholders. This did not, however, prevent the successful conclusion of the Novo Banco sale process in October 2017. We expect to continue to report on the outcomes of these disputes in the coming years. Nevertheless, an important case in the United Kingdom, *Goldman Sachs International v. Novo Banco SA*, confirmed that litigation regarding the resolution measure, including in relation to English law contracts, should be decided by the Portuguese courts. The court stated that there were no grounds to pursue the case in the English courts or to interfere in the Bank of Portugal's exercise of its resolution powers as the national resolution authority.

More recently, two legal proceedings related to the sale of Novo Banco were concluded by the Lisbon Administrative Court, one of which was initiated by a BES shareholder and the other by several holders of subordinated bonds issued by BES. The proceedings were

© 2022 Law Business Research Ltd

aggregated and designated as pilot proceedings. In both legal proceedings, the plaintiffs challenged the validity of the resolution measure applied to BES based on alleged illegalities and constitutionality issues. On 12 March 2019, the Lisbon Administrative Court fully dismissed the plaintiffs' claims.

Highlighted case law

By way of providing context on derivatives, banks operating in the Portuguese market have been contracting swaps with clients during the past decade as follows: under master agreements governed by Portuguese law based on shorter and less complex versions of the International Swaps and Derivatives Association (ISDA) master agreement principles; and under standard ISDA master agreements. The latter alternative has typically been adopted by larger corporations (or public sector entities, as mentioned above) with wider experience in the financial markets, while the former has been more frequently used by smaller clients and by small and medium-sized enterprises (SMEs) less experienced in the financial markets and more inclined to sue banks when an underlying asset evolves negatively.

During the past few years, several cases involving interest rate swap agreements (essentially those related to disputes with SMEs) have been analysed and decided by the Portuguese Supreme Court of Justice (STJ).

In these cases, particularly during the global financial crisis, the STJ acknowledged the validity of derivative contracts and the applicability of a swap termination owing to an abnormal change in circumstances.

Case law has also addressed choice-of-forum clauses, having decided that choice of jurisdiction based on the applicable EU civil procedure rules (notably, the Recast Brussels Regulation[15]) prevails over Portuguese domestic law, therefore acknowledging the validity of clauses attributing jurisdiction to the courts of England.

In another judicial decision, the Lisbon Court of Appeal ruled that not only shareholders that have decided to tender their shares to a bidder in a takeover are protected by prospectus liability. Rather, any investor, either buyer or seller, that relied on the information inserted by a bidder in a prospectus may claim for damages against the bidder.

iv Relevant tax and insolvency law

Tax considerations

The relevant tax issues will naturally depend on the type of transaction at stake.

In respect of corporate finance-type transactions, it is important to remember that where financing with links to Portugal is contemplated, certain tax contingencies must be considered. For instance, account should be taken of any withholding tax on interest payments (as a general rule, 28 per cent for natural persons and 25 per cent for legal persons), including for non-residents (i.e., individuals, companies and even financial institutions). Another important aspect is the possible application of stamp duty when some sort of financing is granted (up to 0.6 per cent of the capital, depending on the maturity) and when paying financial interest and fees (4 per cent of each payment).

In the case of a bond issue, these taxes may not apply or may be applied to a lesser extent. Decree-Law No. 193/2005 of 7 November provides an exemption from withholding tax on

15 Regulation (EU) 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast).

© 2022 Law Business Research Ltd

interest payments to be made to non-residents if the stated requirements and formalities are met, including being registered in a CSD recognised by law (such as Interbolsa). Similarly, since bonds are a capital markets instrument, stamp duty is not applicable to bond financing or to applicable interest payments, seeing as that would restrict the free movement of capital within the European Union. In any case, it should be borne in mind that in the case of secured financing, and if no stamp duty is levied on the financing, stamp duty may be payable on the security package and on financial fees.

Outline of the Portuguese insolvency regime

The Portuguese Insolvency and Companies Recovery Code, established under Decree-Law No. 53/2004, has been regularly amended and updated and contains provisions similar to those found in the insolvency regimes of most jurisdictions, aimed at tackling the usual concerns arising in insolvency cases. In addition to regulating insolvency proceedings, the Code sets out a special recovery procedure, the aim of which is to promote the rehabilitation of debtors facing financial difficulties but that prove to still be economically viable, by providing a moratorium on any creditor action while a recovery plan is being agreed. This special recovery procedure constitutes urgent stand-alone legal proceedings based on out-of-court negotiations that are later confirmed by a court.

As usual, the law provides for hardening periods (backward counting periods from the insolvency proceedings and in respect of which legal contracts may be resolved or terminated with retroactive effect), which notably depend on the date of contracting and the particular circumstances under which the relevant legal contracts were entered into; this includes a 60-day hardening period in respect of security provided with the relevant financing commitment (if these are after the financing, the period is six months). Financial collateral arrangements are excluded from the scope of the Code.

v Role of exchanges, central counterparties and rating agencies

The Target 2 Securities system entered into force in 2015 and is applicable. Interbolsa published Regulation 2/2016 for this purpose. Interbolsa also became eligible as a securities settlement system for the purposes of the short-term European paper (STEP) and STEP label,[16] the aim of which is to enhance the market and collateral prospects for Portuguese commercial paper issuers.

vi Other strategic considerations

Certain negative developments in the market during the past few years have underlined the need for systemic entities and listed companies to have robust compliance and risk management systems in place. Growing public pressure on official institutions has resulted in more intense scrutiny by the supervisory authorities, including the CMVM, regarding:

a prospectus review and approval, although there is now a trend within the CMVM to focus on quicker and more predictable reviews and calendar planning;

b complex financial products placement and relevant documentation;

16 STEP programmes must fulfil certain criteria to be STEP-compliant and therefore eligible to apply for a STEP label.

© 2022 Law Business Research Ltd

c rules of conduct; and
d corporate governance.

The internal governance arrangements of listed firms and financial institutions, and the assessment of the suitability of those who hold positions in credit institutions and corporate bodies, are topics increasingly on the regulators' radar.

Investor activism and securities law litigation have also increased in recent years. As noted above, it should always be borne in mind that in Portuguese corporate finance transactions there may be relevant tax issues to be considered and the bond route may be a way to overcome the hurdles encountered.

III OUTLOOK AND CONCLUSIONS

The plethora of restrictive measures implemented in the context of the covid-19 pandemic have caused a series of adverse economic effects of such intensity and breadth that states have been forced to intervene. This intervention has been seen in the moratorium on loans to protect debtors facing difficulties as a result of the pandemic and in the social distancing measures imposed by the authorities. The Portuguese government approved Decree-Law No. 10-J/2020, establishing a temporary legal moratorium on certain financing agreements, with a view to protecting the liquidity of companies and families and extending the duration of loan agreements with full payment at the end of the contractual term. This regime was in force until 30 September 2021 and was then extended by Law No. 50/2021 of 30 July until 31 December 2021. The current scenario will doubtless have an impact on companies' and families' cash flow, the global economy, the financial system and debt markets; however, it may also bring new investment opportunities.

In addition, the military conflict between Russia and Ukraine is also strongly responsible for the current troubled period that financial markets have been experiencing.

Furthermore, the European area is also dealing with inflation because of soaring commodity prices and pandemic-induced supply–demand imbalances. As a result of broad price pressures and tighter monetary policy implemented by certain central banks, interest rates and asset price volatility have also risen sharply since the start of 2022. Inflation increased further to 8.6 per cent in June. Surging energy prices were again the most important component of overall inflation. Market-based indicators suggest that global energy prices will stay high in the near term. Food inflation also rose further, standing at 8.9 per cent in June 2022, in part reflecting the importance of Ukraine and Russia as producers of agricultural goods. Higher inflationary pressures are also stemming from the depreciation of the euro exchange rate.[17]

Although we have witnessed the resurgence of an active economic environment in Portugal in terms of new deals (with strong issues of debt, equity and asset-backed securities), we have also seen some issuers using consent solicitations, which is an alternative liability management option, amending certain terms and conditions of the instruments or facility agreements (such as financial ratios to tackle certain existing or prospective financial impacts).

17 Source: European Economic Bulletin, ECB, June 2022.

© 2022 Law Business Research Ltd

Appendix 1

ABOUT THE AUTHORS

JOSÉ PEDRO FAZENDA MARTINS

Vieira de Almeida

José Pedro Fazenda Martins has a master of laws (LLM) degree from the University of Lisbon and is a former head of the issuers and corporate finance team of the Portuguese Securities Market Commission (CMVM). He joined Vieira de Almeida in 2011 and is a partner in the banking and finance practice, where he regularly advises on the capital market sector's most complex cases. He has been actively involved in privatisations, initial public offerings, takeover bids and corporate governance issues. He is a former assistant professor at the University of Lisbon's faculty of law and has published several articles and been a speaker at several conferences in the field of securities law. He is a founding member of the Securities Law Institute of the University of Lisbon.

ORLANDO VOGLER GUINÉ

Vieira de Almeida

Orlando Vogler Guiné has a law and a business law master's degree from the University of Coimbra and a postgraduate degree in securities and business law from the University of Lisbon. He joined Vieira de Almeida in 2006 after an internship with the Portuguese Securities Market Commission (CMVM). Since then, he has been actively involved in capital market transactions, including takeovers, liability management, asset-backed securities, debt, hybrid and share issues, and in initial public offerings and accelerated book-building, bank recapitalisations and resolutions, undertakings for collective investment and derivatives, assisting leading institutions in the financial and non-financial sectors. In parallel with his professional work, he is a regular conference speaker and guest lecturer on postgraduate and master's courses, with several published works on securities and company law. He is a member of the Institute for Business and Labour Law (IDET) of the University of Coimbra's faculty of law and of the Governance Lab think tank.

© 2022 Law Business Research Ltd

SORAIA USSENE

Vieira de Almeida

Soraia Ussene has a law degree from the University of Lisbon, a master's degree in corporate law from the Catholic University of Portugal and a postgraduate degree in securities law from the University of Lisbon. She joined Vieira de Almeida in 2015 and is an associate in the banking and finance practice, where she is actively involved in capital market transactions, including liability management, asset-backed securities and debt issues, and in initial public offerings.

VIEIRA DE ALMEIDA

Rua Dom Luís I, 28
1200-151 Lisbon
Portugal
Tel: +351 21 311 3400
Fax: +351 21 311 3406
jpfm@vda.pt
ovg@vda.pt
sju@vda.pt
www.vda.pt

© 2022 Law Business Research Ltd

ISBN 978-1-80449-131-7

© 2022 Law Business Research Ltd